

IT 95-20
Tax Type: INCOME TAX
Issue: Non-Filer (Income Tax)

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
ADMINISTRATIVE HEARINGS DIVISION
CHICAGO, ILLINOIS

THE DEPARTMENT OF REVENUE)
OF THE STATE OF ILLINOIS,)
)
)
v.) No.
) SSN:
)
XXXXXX,)
)
Taxpayer)

RECOMMENDATION FOR DISPOSITION

APPEARANCES: None. This matter was submitted on documents only.

SYNOPSIS: This case involves a proposed tax deficiency and penalties for the taxable year ending 12/31/91.

FINDINGS OF FACT:

1. Pursuant to Section 6103(d) of the Internal Revenue Code, the Department of Revenue received information that the taxpayer had filed a 1991 federal income tax return in which he reported adjusted gross income of \$58,659.00 and listed an Illinois address thereon.

2. The records of the Department of Revenue disclose that the taxpayer never filed an Illinois income tax return for the taxable year ended 12/31/91, and never paid any Illinois income tax on income earned that year.

3. The Department of Revenue originally issued a Notice of Deficiency proposing to assess income tax computed upon the adjusted gross income reported on his federal income tax return. The Notice of Deficiency also proposed to impose penalties for the taxpayer's failure to file a return (35 ILCS 5/1001), failure to pay tax (35 ILCS 5/1005) and failure to

pay estimated tax (35 ILCS 5/804).

4. In response to the original Notice of Deficiency, the taxpayer filed a timely protest and request for hearing to which he attached copies of his federal return, W-2 and 1099-R forms. Those documents established that the taxpayer had received \$28,178 from a qualified pension plan for which he was entitled to a subtraction modification pursuant to 35 ILCS 5/203(a)(F).

5. The Department of Revenue recomputed the proposed deficiency after allowing the aforementioned subtraction modification and on April 19, 1994, issued an Amended Notice of Deficiency proposing to assess a reduced amount of tax and penalties.

6. In response to the Amended Notice of Deficiency, the taxpayer filed a timely protest and request for hearing in which he claimed that \$29,957 of the recomputed base income of \$30,481 proposed in the Amended Notice of Deficiency was not subject to Illinois income tax because such income consisted of deferred compensation payments. Appended to his protest was a copy of a memorandum from XXXXX, Deferred Compensation Center, advising the taxpayer that deferred compensation payments were not subject to Illinois income tax.

7. XXXXX issued its memorandum in response to a private letter ruling of the former Director of Revenue, Roger D. Sweet. Private Letter Ruling 89-0026 promulgated pursuant to a Slip Opinion issued on December 18, 1988 provides that the Department has made a determination defining deferred compensation distributions as a government retirement benefit under 35 ILCS 5/203(a)(E), now 35 ILCS 5/203(a)(F).

CONCLUSIONS OF LAW: Section 5/203(a)(F) of the Illinois Compiled Statutes, (1992), which defines "base income" for individuals, is in turn modified by:

(F) An amount equal to all amounts included in such total

pursuant to the provisions of Sections 402(a), 402(c), 403(a), 403(b), 406(a), 407(a) and 408 of the Internal Revenue Code, or included in such total as distributions under the provision of any retirement or disability plan for employees of any governmental agency or unit...(Emphasis supplied)

It has further been determined through a letter ruling (89-0026) issued by the Department of Revenue in reference to the above section, that deferred compensation distributions are a retirement benefit for employees. Although this position holds as a change from a previous position held since 1979, it nevertheless represents the current ruling of the Department on the subject matter and one which would have been applicable to the time period in question.

It therefore stands that income derived for the 1991 tax year from deferred compensation distributions are not subject to tax under the Illinois Income Tax Act. Accordingly, it is recommended that the Amended Notice of Deficiency be withdrawn in its entirety.

Dennis L. Karns
Administrative Law Judge

10/19/94